DDA OCCASIONAL PAPERS

No. 8 October 2004

United Nations

...ral disarmament and non-proli...
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an evaluation

... of the Advisory Board on Disarm...
...-Level Panel on Threats, Challenges ...

Department for Disarmament Affairs

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Multilateral disarmament and non-proliferation regimes and the role of the United Nations: an evaluation

Contribution of the Advisory Board on Disarmament Matters to the High-Level Panel on Threats, Challenges and Change

United Nations
Department for Disarmament Affairs

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Contents

Preface by the Under-Secretary-General for Disarmament Affairs ..... *v*

Introduction by the Chairman of the Advisory Board *1*

Multilateral disarmament and non-proliferation regimes and the role of the United Nations: an evaluation *7*

Nuclear weapons *11*

Biological weapons *21*

Chemical weapons *25*

Missiles *29*

Small arms and light weapons *35*

Landmines *41*

Export control: multilateral cooperation among smaller groups of states *47*

The role of the United Nations *53*

ANNEX
Members of the Advisory Board *63*

PREFACE

In November 2003, the Secretary-General established a High-Level Panel on Threats, Challenges and Change, to which he assigned the tasks of examining the major threats and challenges the world faces in the broad field of peace and security, including economic and social issues insofar as they relate to peace and security, and making recommendations for a collective response. The report of the Panel is expected to be issued in December 2004.

In response to a request by the Secretary-General to contribute to the work of the High-Level Panel, the Advisory Board on Disarmament Matters, chaired by Professor Harald Müeller, undertook intensive deliberations in 2004 on issues relating to weapons of mass destruction, small arms and light weapons, landmines, export controls, and ways and means to strengthen the United Nations role in disarmament and non-proliferation.

The discussions resulted in a comprehensive document containing an in-depth analysis of the strengths and weaknesses of current disarmament and non-proliferation regimes, an insightful evaluation of old and new challenges, and practical recommendations on how to meet those challenges, with a particular emphasis on the dangerous combination of weapons of mass destruction and terrorism. I pay tribute to the Chairman and his fellow members for their devotion and diligence in fulfilling their mandate.

The Department for Disarmament Affairs is publishing the outcome of the Board's consideration in its Occasional Papers series, hoping that its rich and thought-provoking con-

tent will help contribute to the work and deliberations of the governmental and non-governmental disarmament community and the interested general public.

Nobuyasu Abe
Under-Secretary-General
for Disarmament Affairs

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INTRODUCTION

*Harald Müller**

In response to a request by the Secretary-General, the Advisory Board on Disarmament Matters devoted most of its sessions in 2004 to the formulation of recommendations to the High-Level Panel on Threats, Challenges and Change on issues related to weapons of mass destruction and their means of delivery, small arms and light weapons, and landmines, as well as how to strengthen the role of the United Nations in those fields. After intensive deliberations, the Board produced a content-rich report. Besides contributing to the work of the High-Level Panel, the document stands on its own as a blueprint on how to tackle the double danger of the spread of dangerous weapons among nation-states and to non-state actors.

This report demonstrates the capability of good-willed representatives of the international community to tackle difficult and controversial issues. It proves the immensely cooperative and positive spirit among the Board members in their work, and the energy they have devoted to producing useful advice for the Secretary-General. As chairman, I feel humble and much obliged to my fellow members for enabling me to submit this report which, we all hope, will assist the Secretary-General in tackling the demanding and difficult tasks ahead. It goes without saying that, given the sensitivity of the issues covered and their intimate relationship to the national security of states, not every member can subscribe to every conclusion and recommendation in this report. It has to be emphasized, however, that most of the content of the document rests on consensus, and other elements on near-consensus among Board members.

* *Chairman of the Advisory Board on Disarmament Matters*

It is impossible in a brief introduction to do justice to the wealth of ideas contained in the report. A few highlights must suffice to stimulate the reader's interest. In the case of a withdrawal from the Nuclear Non-Proliferation Treaty, the report calls for an emergency meeting of States Parties to the Treaty, with a view to agreeing on a common response and to making recommendations to the Security Council to redress the situation. It recommends a five-year moratorium for the construction of new nuclear fuel cycle facilities. It envisages further reduction and eventual elimination of non-strategic nuclear weapons which present the highest risk in the light of non-state actors threats. It urges the prompt start of negotiations for a verifiable treaty to cut off the production of fissile material for weapons purposes. A convention to ban radiological weapons and warfare is also recommended, as are measures to prevent radiological material from falling into the hands of terrorists.

The Board emphasizes the necessity to strengthen the Biological Weapons Convention and sees the need for enhancing cooperation between all relevant international organizations, notably the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and the World Organization for Animal Health (OIE). In the context of both biological and chemical weapons, national measures to prevent access by non-state actors to weapons and related materials are seen as the most important task ahead.

On missiles, the report records some possibility of promoting a universal development of binding norms while recognizing specific conditions in various regions. It emphasizes the urgency of effective means to deal with man-portable air defense systems (MANPADS), a particularly dangerous instrument to civil aviation in the hands of terrorists. The report underlines the intimate relationship between regulation of the legal possession of small arms and light weapons

(SALW) and the risk of their uncontrolled spread, as the objects of main concern, SALW in illegal trade, quite frequently originate in the legal realm. A legally-binding instrument for marking and tracing SALW is thus of particular importance to sever this link. In addition, the report pleads for a prohibition of any transfer of SALW to non-state actors and for the inclusion in all post-conflict disarmament processes of combined efforts for addressing the SALW problem and reconciliation simultaneously.

The document recognizes the different approaches to landmine problems by Parties and non-Parties to the Mine-Ban Convention (Ottawa Convention). It invites the Ottawa community to address the problem of anti-vehicle mines promptly, and urges the universality of the Ottawa Convention and the Amended Protocol II to the Convention on Certain Conventional Weapons.

Considerable attention was devoted to export controls, an item highlighted by Security Council resolution 1540 that has made certain commitments by States Parties to the various WMD non-proliferation and disarmament treaties, as well as the related supplier regimes, universally obligatory. The report recommends some steps to narrow the gap between participants and non-participants of supplier regimes. Most prominent among these recommendations is the suggestion to establish open-ended working groups to disseminate information on legal and technical issues. In a bold move, the report invites all United Nations Member States to support the Proliferation Security Initiative, the effort of a group of states to stop shipments of dangerous materials and technology that are already beyond the reach of export control agencies. The transformation of this initiative launched by a small group of states into a regular multilateral instrument is regarded as highly desirable.

The report recognizes the need to offer assistance to

developing countries by states and group of states in a position to do so. Capacity-building is one of the most important and effective tools for preventing the proliferation of dangerous weapons. Gone are the times where the proliferation problem resided in technology transfer from North to South. The spread of technological and industrial capability has the downside of presenting new dangers, and help from more experienced to less experienced states on how to cope with this danger is an indispensable part of the overall effort of the international community to stem the proliferation of dangerous weapons, particularly to non-state actors.

The gravest and most consequential considerations concerned the role of the United Nations, the Security Council in particular, notably in crises concerning weapons of mass destruction. The report recognizes the role of the multilateral regimes as the first line of defence against the risks of proliferation to states and non-state actors, and the pivotal function of the Council as enforcer of these regimes. Concluding from past experiences, the report judges that independent technical expertise must be available to the Council since national assessments are not sufficient to establish a clear and unequivocal picture on which to base sound political judgment. The core of such a technical capability could be located in the United Nations Department for Disarmament Affairs which would have a broad roster of experts to draw upon. The report advises taking the views of the states of regions concerned into account whenever the Council has to decide on how to deal with a WMD crisis in the future.

The report recognizes the need for the Council to fill in the void if a clear and present danger exists for which the international community has not yet devised multilateral, binding measures. The Council must use this authority with circumspection and prudence. The report proposes to add a "sunset clause" to all measures taken in this way, i.e., to revis-

it them after an appropriate time span.

I want to thank all Board members for their devotion, commitment and friendship. Without their cooperation and indulgence, it would not have been possible to produce this report. I also thank Under-Secretary General Abe and the DDA staff for their support. I wish to express my particular gratitude to the Board's secretary, Mr. Xiaoyu Wang, whose diligence and invaluable expertise in disarmament issues were indispensable in producing this document.

MULTILATERAL DISARMAMENT AND NON-PROLIFERATION REGIMES INCLUDING THE ROLE OF THE UNITED NATIONS: AN EVALUATION

Contribution of the Advisory Board on Disarmament Matters to the High Level Panel on Threats, Challenges and Change

On 24 December 2003, the Secretary-General asked his Advisory Board on Disarmament Matters "to provide evaluative input to the Panel Secretariat on the status of efforts to control light weapons, landmines, and weapons of mass destruction. Specific recommendations on how to strengthen the various weapons control regimes would also be helpful".

The current report was the response to the Secretary General's request. It gives an overview of the utility of the existing instruments for combating the spread of nuclear, biological and chemical weapons and missiles, as well as small arms and landmines, both to State and to non-State actors; and assesses the relation of these instruments to extra-regime multilateral cooperation and to the role the United Nations may play as the ultimate guarantor of these regimes. It details the strengths and weaknesses of each of the regimes in the face of new challenges and gives recommendations on how to improve them. It discusses and makes recommendations on the role of the United Nations in ensuring and enhancing the ir effectiveness.

The Board took up this task at its February 2004 session. At the outset, it discussed the issues broadly. In the second part of the session, it focussed on the role of the United

Nations. In intersessional work, six Board members prepared working papers on the various regimes, as requested by the Secretary-General. On this basis, and drawing on the discussion of the February session, the Chairman prepared a draft report and circulated it in advance of the July session. The July session was devoted almost in its entirety to the discussion of the draft. It resulted in a second draft that was largely built on the consensus of the members present.[1]

Multilateral disarmament and non-proliferation regimes: An overview

Principally, multilateral disarmament and non-proliferation regimes are legal or political agreements between States. Their main purpose is to curb the spread of weapons between states and to foster disarmament by them. However, each one contains, implicitly but more frequently explicitly, obligations that address the risk that non-state actors might come into the possession of the arms, or the means to produce them, which the respective instrument is meant to prohibit or regulate. Full use should be made of these instruments to prevent weapons, materials and technologies from falling into the hands of terrorists.

There are vast differences between the character, membership, and stipulations of these instruments. Those dealing with weapons of mass destruction and anti-personnel mines are legally-binding treaties or conventions. Small arms are dealt with by a politically binding Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects. Missiles are addressed by a multilateral export control regime with very limited membership, and a broader code of conduct which is, however, less demanding than the export control regime. The

Nuclear Non-Proliferation Treaty emical Weapons
Convention have intrusive verifi ems, and some
verification is mandated for the O ention prohibit-
ing anti-personnel mines. No veri attached to the
Biological Weapons Convention n nstruments con-
cerning missiles and small arms.

Participation is not unive of the instru-
ments. The NPT is the most wid to instrument
with 188 States parties. Parties to ties and agree-
ments are fewer.

Note

[1] In the July session, the foll ers participated:
Harald Müller (Chairman), Vicente B Pascal Boniface,
Elisabet Borsiin Bonnier, Perla Carv Michael Clarke,
Hasmy Agam, Kuniko Inoguchi, Mahm Ho-Jin Lee, Liu
Jieyi, U. Joy Ogwu, Boris D. Pyadys n G. Rademaker
(joined the discussion after the Board h iscussed the first
four items), Tibor Tóth and Patricia Le

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NUCLEAR WEAPONS

Existing Regimes: success and challenges

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was set up to prevent interstate nuclear the proliferation of nuclear weapons and is built on three pillars — renunciation by the non-nuclear-weapon States of nuclear weapons, nuclear disarmament and cooperation in peaceful uses of nuclear energy.

In stemming the proliferation of nuclear weapons, the NPT has been largely successful. The number of countries disposing of nuclear weapon capabilities today is far less than predicted in the years before the NPT entered into force. The Treaty also served as a salient norm persuading several countries to cease considering nuclear weapons programmes, to terminate such programmes or even eliminate existing nuclear weapons in their possession.

The verification system of the NPT is built on safeguards agreements which all of its non-nuclear-weapon-States parties are obliged to conclude with the International Atomic Energy Agency (IAEA). This verification system contained initially very limited rights of access for IAEA inspectors. In practice their access rights remained confined to sites declared by non-nuclear-weapon States as containing fissile material. After the revelations about Iraq's comprehensive nuclear weapons programme and concern about the Democratic Republic of Korea's nuclear activities — both countries are NPT member states under inspection by the Agency — the verification system was profoundly revamped. The reform process resulted in the adoption of the Model Additional Protocol that enhances the right of access for inspectors to nuclear-related sites that do not harbour fissile material, and

to sites adjacent to declared nuclear facilities. The IAEA includes in its assessment additional information, e.g., satellite images bought from private companies, media accounts and expert studies, and information provided by member states. Laboratory technology has vastly improved, so that very tiny samples taken at sites or in their environment can give reliable hints of the presence of fissile material. Nuclear-weapon States, while not submitting to all stipulations of the Additional Protocol applicable to non-nuclear-weapon States, have concluded additional protocols with a view of helping to prevent the proliferation of material, equipment and technology, including to non-state actors.

Recommendations

- *Those NPT parties that have not yet done so should conclude safeguard agreements with the IAEA promptly.*

- *The NPT Review Conference should make it politically binding for all NPT members to conclude Additional Protocols with the IAEA and to bring them into force expeditiously.*

- *Complementary access as provided for in the Additional Protocol should be used regularly and effectively to create and uphold confidence in existing regimes.*

The NPT gives all parties the right of the full development of civilian nuclear energy, including sensitive activities such as enrichment and reprocessing. At the same time, it allows withdrawal within a period of 90 days. This leaves open the possibility of a party preparing, in bad faith, all the necessary facilities for a break-out of the Treaty and then declaring withdrawal.

Recommendation

- *Without prejudice to any action that the Security Council may decide to take, withdrawal should trigger an emergency meeting of NPT States parties, with a view to taking urgent action to correct the situation. The meeting should scrutinise the reasons given by the withdrawing state on its withdrawal in the declaration required by the Treaty; determine, on the basis of IAEA reporting, if the withdrawal was premeditated in bad faith under the deceptive cover of peaceful intentions; recommend to States parties the appropriate reaction towards the withdrawing state; and convey the results of the meeting to the Security Council.*

Presently, there exists a surplus of nuclear fuel supply and an on-going debate on the back end of the fuel cycle. At the same time, the construction of fuel cycle facilities that appear not to be economical has raised concern. While article IV of the NPT gives the right to States parties to develop fully the peaceful uses of nuclear energy, States should refrain from projects that give suspicion of non-peaceful intentions.

Recommendation

- *A five-year moratorium on the new construction of such fuel cycle facilities should be declared, accompanied by a guarantee for fuel supply, at market prices, by present suppliers to all parties respecting the moratorium.*

- *The results of the group of experts convened by the IAEA Director General to assess ways to "multinationalize" the fuel cycle which*

will be available in 2005 should be carefully considered and, as appropriate, implemented by the international community.

- *The use of highly enriched uranium and plutonium in civilian uses should be considered. States using highly enriched uranium in naval fuel should consider turning to reactor technology that makes use of lower enrichment grades.*

In the field of nuclear disarmament, much remains to be done. Among non-nuclear-weapon States, there is strong criticism that the nuclear-weapon States have not lived up to their undertaking to eliminate their nuclear arsenals. This rift creates permanent tension within the Treaty membership, diminishes the solidarity within the Treaty community, and diverts attention from the few, but crucial cases where breaches of the non-proliferation commitment are suspected or proven. It is thus essential to ensure the full commitment of the nuclear-weapon States with article VI of the NPT and to recognise the unequivocal relationship between nuclear disarmament and international peace and security.

Recommendations

- *The thirteen steps agreed at the 2000 NPT Review Conference, including, inter alia, enhanced transparency, the irreversibility of nuclear weapons reduction, bringing into force the Comprehensive Nuclear-Test-Ban-Treaty and beginning negotiations on a fissile material cut-off instrument should be implemented promptly.*

- *The further reduction and eventual elimination of non-strategic nuclear weapons is of particular priority with regard to the non-state actor threat, as these weapons are most sus-*

ceptible to theft and easily usable by unauthorised persons.

While the NPT is the most universal multilateral non-proliferation and disarmament treaty, it is not fully universal. This detracts from its effectiveness and creates risks, dangers and underlying incentives for States Parties to reconsider their membership.

Recommendations

- *The achievement of the universality of the NPT should remain one primary objective to be actively pursued and eventually realised by the international community.*
- *Pending universalisation, non-parties should undertake to take all necessary measures as contained in the safeguard agreement and the additional protocol for preventing the proliferation of nuclear weapons and related technology to other actors, and to be accountable, to the degree compatible with national security, to the international community for such measures. Parties should avoid the transfer of all nuclear-related materials, technology, equipment and scientific assistance to non-parties.*
- *Non-parties should take all necessary measures — and the international community should insist they do — to prevent the dangers associated with a nuclear arms race and implied by operating unsafeguarded nuclear facilities.*

States Parties regard the prevention of non-state actors obtaining nuclear material as being within the scope of their undertakings under the NPT. The final declaration of the 2000 Review Conference emphasized "the paramount importance of effective physical protection of all nuclear material and called upon all states to maintain the highest possible standard of security and physical protection of nuclear materials". The Conference expressed "concern about the illicit trafficking of nuclear and other radioactive materials" and "urged all States to introduce and enforce appropriate measures and legislation to protect and ensure the security of such material".

The combination of material accountancy and comprehensive safeguards, such as contained in the Additional Protocol, with strict measures of physical protection such as laid down in the IAEA guidelines (INFCIRC/225/Rev.4) and the Convention on the Physical Protection of Nuclear Materials provides the best assurance that the possibility of access by non-state actors to nuclear materials will remain remote.

Recommendations

- *The 2005 NPT Review Conference should explicitly address the risk of non-state actor access to nuclear weapons, material and technology and declare explicitly that preventing such access is included in the undertakings of all parties to the Treaty.*
- *All states should adhere to the Convention on the Physical Security of Nuclear Materials.*
- *The Convention should extend from material in international transport to all nuclear material in domestic use, storage, and transport with a view to making protection for*

that material comparable to that recommended in the IAEA guideline INFCIRC 225/Rev. 4.

- *Parties should be requested to report to the IAEA on the adoption of measures undertaken to bring national regulations into conformity with this amendment.*

- *Member states should also consider making extensive use of peer review mechanisms offered by the IAEA to obtain expert checks and recommendations on their national systems to control nuclear materials.*

- *The IAEA should install a "physical security assistance pool", making available on request to member states in need of assistance its own technical, legal and personnel resources as well as resources offered by member states in a position to do so.*

- *The IAEA counterterrorism programme should continue with adequate funding.*

- *The organizations administering existing nuclear-weapon-free zones should alert their membership to the problem of physical security of fissile material.*

The NPT does not oblige nuclear-weapon States to submit any nuclear material to international verification measures. Some of them have done so on a voluntary basis. Coverage, however, is very limited. The same applies for States outside the NPT who have nuclear weapons capabilities. Here, only material of foreign origin or processed in imported civilian nuclear facilities might be under safeguards. Material outside international verification creates concern as

there is no assurance that it is accounted for. If a fissile material cut-off were concluded with an appropriate verification system, the scope of accounting to the international community would extend considerably, with real gains in terms of security. An FMCT would leave material in military uses still outside international scrutiny. However, countries holding such stocks could undertake to apply the strictest internal accountancy and physical security to all such material until complete nuclear disarmament is achieved.

Recommendations

- *Negotiations on a fissile material cut-off treaty should begin forthwith in the CD and be conducted expeditiously.*

- *Pending nuclear disarmament, States possessing unsafeguarded stocks of fissile material should undertake unilaterally to observe strict accountancy and physical security measures, and confidence-building measures and transparency should be applied.*

- *The "10 plus 10" programme of the G-8 that offers assistance to republics of the former Soviet Union to secure fissile material both in the civilian and the military realm should be extended, on request, to other states in need of such assistance.*

The nuclear non-proliferation and disarmament regime does not address the issue of radiological weapons and warfare, as it is strictly devoted to nuclear weapons and the respective fissile materials. No international instrument is available in the realm of radiological weapons. The IAEA has initiated a programme to secure better radiological sources that could become the basis for non-state actors to fabricate

radiological weapons, and to search for orphanized sources, i.e., radiological sources no longer in registered custody.

Recommendations

- *The CD should begin negotiations on a convention for the prohibition of radiological weapons/warfare.*
- *This convention should also explicitly address the obligation by States Parties to prevent the diversion of radioactive material to non-state actors. This should include licensing, registration, reliable custody and orderly disposal of radiological sources.*
- *IAEA activities to recover orphanised radiological sources must continue with adequate funding.*

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BIOLOGICAL WEAPONS

Existing regime and challenges

The Biological Weapons Convention (BWC) was concluded in 1972. It has presently 151 States parties. It was challenged in the nineties by revelations about past offensive biological weapons projects by several States, by the suspicion that several countries were conducting BW offensive programmes contrary to the international norm and by the increasing concern that non-state actors might strive to acquire and use biological weapons, as proven by the efforts of the Aum Shinrikyo terrorist sect to produce anthrax and release it into the environment and the anthrax scare in the United States after 11 September 2001. These concerns were sharpened by the growing technical possibilities offered by progress in biogenetic science.

In an effort to strengthen the Convention in order to cope with these concerns, the parties to the BWC worked towards a protocol on transparency and compliance that was meant to improve the level of mutual confidence-building and to provide measures to deal with the problem of clandestine biological weapons programmes. However, in 2001 this attempt failed on objections that no measure could provide assurance that such programmes were absent and could even be abused for non-BWC related objectives. As a result, the negotiations of the Ad Hoc Group on transparency and compliance were suspended. Regrettably, an opportunity to strengthen the BWC and its capability to address terrorist threats was therefore missed.

The Fifth BWC Review Conference in 2002 barely

reached consensus to initiate a new process focused on annual expert meetings dealing in each session with a specific issue to strengthen the Convention, and annual meetings of State Parties discussing the expert meetings' results. While the danger of a complete shut-down of the multilateral prohibition regime until 2006 was averted by this new process, this was only possible by explicitly renouncing the intention to codify new measures and seek possibilities to install verification instruments.

Nevertheless, this new process offers the opportunity of focused and substantive work that is relevant to coping with the most urgent challenges. Participation takes place at higher than the technical level. It is more representative than at review conferences and thus helps promote increased awareness of the norm against BW. The meetings are also conducive to creating links between States Parties, and between relevant IGOs and States Parties.

The 2003 meeting of experts and the ensuing meeting of States parties dealt with the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation and the related topic of national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins. The adoption of national measures empowers national law enforcement and judiciary bodies to take preventative and responsive action. Criminalizing BW relevant activities expands the reach of the BWC to individuals. National legislation solidifies international norms.

The meetings in 2004 are dealing with enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease; and strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance,

detection, diagnosis and comba fectious diseases affecting humans, animals and is addresses the urgent need to increase internati ity to respond to and detect disease outbreaks.

In 2005, the experts will content, promulgation, and adoption of codes of scientists. This is of great importance in order to ntists involved in research with dual use applicatio g input from the scientific community will, of cou ntial to achieving this objective.

Recommen

- *States parties ke a major effort to make good use o ures identified in the draft protocol.*
- *The achievem new BWC process must be consolida*
- *Measures d n the new BWC process should be m cally binding.*
- *There should b ized effort by countries in a positio to offer assistance in further nati mentation efforts by countries in nee assistance on a voluntary basis. Effo be made at global, regional and natio*
- *The threat liferation, including to non-state hould be addressed at all relevant yond the global level, efforts should aken multilaterally, regionally, na d locally.*
- *Strong efforts undertaken to raise awareness abo activities*

and further needs outside the BWC framework

- *Proposals should be prepared in time on how to carry forward the process in the context of the BWC beyond 2006.*

- *All relevant organizations such as the World Health Organization (WHO), the Food and Agricultural Organization (FAO), the World Organisation for Animal Health (OIE) must be part of a sustained, integrated, multifaceted effort in a continuing process with frequent review.*

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CHEMICAL WEAPONS

Existing regime

The Chemical Weapons Convention (CWC) is by far the most complete architecture for a WMD disarmament regime because it leads to the elimination of a whole category of WMD and because of its comprehensive and robust verification system. Several countries have reported their possession of CW, or the existence of CW left on their territories by former enemies, and are in the process of dismantling these stocks. The CWC also obliges member states not to contribute to the spread of CW agents. The treaty organization, the Organisation for the Prohibition of Chemical Weapons (OPCW), is undertaking verification and demilitarization (of chemical weapons) activities vigorously. CWC serves as a very solid foundation for more intense international cooperation in the area of chemical weapons with a view to blocking their access to terrorists. The OPCW and its member states, after 11 September 2001, have initiated activities to achieve this objective. This important regime must be strengthened and fully utilized.

Challenges

Chemical weapons have been actually obtained and used by terrorists (the Sarin release in the Tokyo subway in 1995). The casualty figure (12 people killed and over 5,000 injured) could have been much higher had it not been the rapid reaction of the Japanese authorities or had the terrorist group commanded a more sophisticated means of delivery at the time.

The probability of a repetition of the Tokyo episode

or similar incidents does unfortunately exist for several reasons:

1. If used efficiently, chemical weapons can cause high lethality and massive panic while posing relatively low risk for those delivering the chemical agent.

2. Chemical weapons could be obtained by terrorists either through diverting existing weapons from the arsenals of States or by gaining access, through different means, to industrial facilities which manufacture chemicals that can be diverted to produce chemical weapons. Chemical industry facilities are spread all over the world and many chemicals which are of dual use nature are accessible with relative ease. It is relatively easy to conceal the illicit activites of a plant falling in the hands of a terrorist group. Deadly chemical agents could also be produced on a small scale in terrorist-run, small-sized laboratories, making use of technology and raw materials available on commercial markets.

3. The variety of chemical weapons agents poses problems for early identification and warning. And there are no immediate antidotes to stop their effects on people affected. To plan a defense against chemical terrorism is difficult.

Recommendations

- *Strengthening and fully utilizing the existing regime The legal basis is solid and the legitimacy is flawless and there is no doubt that a stronger regime is the best way to prevent access to chemical weapons by terrorist groups and to establish, through mechanisms of international cooperation, means of defense against possible attack by terrorists with such weapons. Specifically, a) achieving universality of the CWC must be accorded priority; and b) providing means and resources to OPCW to*

utilize fully the instruments of monitoring and verification with regard to both existing chemical weapons (prior to their destruction) and to relevant chemical industry facilities that produce, consume or store sensitive dual use chemicals.

- *States parties should fully comply with all their obligations under the CWC.*

- *Achieving chemical weapons disarmament is fundamental to guaranteeing non-proliferation. It is vital that chemical disarmament should be tackled with urgency. Every effort should be made by those member States possessing chemical weapons in cooperation with the OPCW to ensure compliance with the destruction deadlines for chemical weapons stockpiles as provided in the CWC, if not sooner. The full implementation of the disarmament provisions of the CWC will contribute greatly to combating chemical terrorism. The possibilities of chemical weapons being subject to theft manifest the importance of destroying all stockpiles of chemical weapons as soon as practicable.*

- *Promoting national implementation, including export controls The ultimate responsibility for preventing CW from falling in the hands of terrorists rests with States. States should enact national legislation to implement fully the CWC, including criminalizing any activities that violate it. States should adopt stringent regulations obliging private actors handling dual use chemical substances and technologies to prevent the diversion of those*

assets into unauthorized hands, as well as strict export control measures with regard to dual use chemicals, especially those provided in the schedules of the CWC, reporting duly to OPCW on those transfers stipulated by CWC.

- *Fostering international cooperation and assistance Practical mechanisms and measures need to be developed to promote the peaceful use of chemical activities by member States of CWC and to provide emergency assistance to member States against possible CW attacks. This would contribute greatly to promoting the universality and implementation of CWC. Training for special national police and military units to identify CW agents should be provided and on decontaminating affected areas. Technical knowledge should be shared about effective protective suits and modern gas masks preventing the intrusion of aerosolized particles into the respiratory system. Methods and experiences should be made available with respect to civil protection against chemical attacks, including an appropriately prepared national health system.*

- *Following technical developments OPCW should give high priority to developing its capacity to monitor and assess the risk of new chemical agents that could be relevant to the CWC in view of rapid scientific and technological developments. In this regard, full use should be made of the work of the Scientific Advisory Board. State parties should fully cooperate with the OPCW in this field.*

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MISSILES

Existing regimes and initiatives

The United Nations Panel of Governmental Experts on missiles in all its aspects

The first Panel submitted a report in 2002 (A/57/229). This report was mainly descriptive of the complex situation regarding missiles and did not single out any specific course of action to be pursued. The second Panel will report its findings to this year's General Assembly. In the deliberations of the first Panel, there were significant differences regarding the focus and scope of concern regarding missiles, the difference between vertical and horizontal proliferation, the problem of ballistic missile transfers, the extent of export controls, the use of space for peaceful purposes as a cover for development of ballistic missile technology and the implications of ballistic missile defense. The report addressed some types of missiles, such as Man-Portable Air-Defence Systems (MANPADS) and Unmanned Aerial Vehicles (UAVs) in the context of terrorist acquisition and use of missiles and rockets.

The UN Register of Conventional Arms

The Register includes seven categories of weapon systems the transfer of which should be reported annually to the UN Secretariat by States. Category VII of the Register includes a definition of "Missiles and Launchers" and a new sub-category regarding MANPADS. This mechanism is a useful measure of transparency but is modest in its present scope and also not applied on a global basis.

The Hague Code of Conduct for the Prevention of Ballistic Missile Proliferation

Launched in autumn 2002 in the Hague and initiated by members of Missile Technology Control regime (MTCR) [see section on export control], the Hague Code of Conduct is a politically binding arrangement with a membership of approximately 110 countries. The code contains several confidence-building measures (transparency and pre-notification) in the missile area as well as a call on member states to exercise restraint in their national holdings. This initiative is considered a modest first step but does not include at this point significant countries in the Middle East and Asia. There are differences of opinion regarding the effectiveness of the confidence-building measures, their nature, whether they should be mandatory or voluntary and whether they are sufficiently flexible for application in the various regional contexts.

The INF Treaty is a bilateral Treaty concluded in 1987 to eliminate intermediate-range missiles by the United States and the Soviet Union. As a consequence, it led to the destruction of a whole class of missiles not only in these two states, but also in allied countries and in the successor states of the Soviet Union. As the stability in many regions is threatened by this class of missiles, opening up this Treaty to additional signatories could offer a useful disarmament tool. At the same time, concern exists that the stability of this treaty could be jeopardized by missile programs at the Euro-Asian periphery.

As is evident from the above efforts and initiatives, there is no overarching framework, universal norm, treaty or agreement governing the development, testing, production, acquisition, transfer, deployment or use specifically relating to missiles. The international community should look into the possibility of fostering a consensus for establishing the conceptual basis for an overarching treaty regulating missiles in

their various contexts. (There are different views on ABM, missile defense versus missile proliferation and outer space)

In addition, even where there are more defined efforts and initiatives, their relevance to high-tension areas such as Asia and the Middle East is questionable. Their relevance to the prevention of missiles and rockets reaching the hands of terrorists is also limited. It should be recalled that the Code of Conduct and the MTCR deal with missiles with a range above 300 kilometres and terrorists would be far more likely to seek and use rockets with a lesser range.

Challenges

Missiles have become in recent years the focus of renewed concern in view of the accelerated proliferation of longer range ballistic missiles, their capacity to deliver WMD and the destabilizing role of such systems in high-tension areas. Concerns vis-à-vis the extended range, greater accuracy and relative ease of availability of these systems have led to diplomatic efforts and initiatives dealing with different aspects of missile proliferation.

The development of missile defense capabilities has ambiguous consequences for the field of missile proliferation. On the one hand, it may stimulate efforts to develop ever more sophisticated missile technologies so as to defeat such defences. Also, the spread of interceptor missiles may become a new source of proliferation of missiles for offensive purposes, as a change in the ballistic curve in which interceptors fly could enable them to serve in this role. On the other hand, do missile defences serve the same objective as efforts to counter missile proliferation, namely, to curb the dangers inherent in the spread of missiles. Effective defences may lead in the long term to a reduced motivation to procure what would then be useless missile technology.

Areas in which progress may be possible

Notwithstanding the above difficulties, it may be possible to identify the following points on which there may exist more substantive agreement between countries regarding the issue of missiles.

1. Greater emphasis is being given to the prevention of proliferation of ballistic missiles and MANPADS in view of the latter's danger to civil aviation if employed by terrorists; recent efforts to establish an OSCE code of conduct in this area are welcome and might be emulated by other regional organizations.

2. There is a growing recognition of the importance of effective national export controls regarding missiles and their related technology as a means to prevent proliferation to states and terrorists, as well as their importance in fostering confidence on a regional and multilateral level.

3. Growing recognition that any missiles, rockets or related technology should be prevented from reaching the hands of terrorists using a combination of tools in the diplomatic arena including supplier regimes (MTCR, Wassenaar), and the Counter-Terrorism Committee (CTC) established under Security Council Resolution 1373.

4. While countries have the right to pursue the peaceful uses of space, this should not be exploited as a pretext to develop ballistic missiles. In this regard, transparency and confidence-building measures should be adopted.

5. There is a need to relate to the problems of missiles in their regional political context and consider the development of regional confidence building measures on the basis of arrangements freely arrived at between the states of the region.

Recommendations

- *Since Security Council resolution 1540 only refers to the issue of missiles in the context of means of delivery of WMD, the Secretary-General should urge the Security Council to adopt a narrower and more operative resolution addressing the issue of shoulder-fired missiles (MANPADS) and their danger to civil aviation through terrorist use. This would constitute an important step in the joint areas of proliferation, terrorism and missiles that are in need of a combination of practical measures, greater international awareness and diplomatic leadership. This is a step that should be considered in the short and immediate term.*

- *In addition, for the medium term, it would be timely for the Security Council and the Secretary-General to call for Member States of the United Nations to adopt effective national export controls in relation to missiles, rockets, MANPADS and any other means of delivery in transfers to other States and a total ban of such transfers to non-state actors that could cause extensive loss of life and mass-disruption in the post 9/11 context. Such export controls could also foster and develop confidence between countries in a regional and global context.*

- *The present UN Panel of Governmental Experts on missiles in all their aspects should provide the Secretary-General with a more focused attempt to strengthen the emerging elements of 'greater agreement' indi-*

cated above. The Department for Disarmament Affairs could also provide the Secretary-General with an informal programme of action to strengthen and consolidate those emerging trends in the context of a longer time frame.

- *The Chairman of the CTC should undertake consultation with the chairmen of the MTCR, the Nuclear Suppliers' Group (NSG), the Australia Group, the Wassenaar Group, the IAEA, the OPCW, the WHO and other relevant organizations, to consider measures that could be taken to enhance the cooperative effort between non-proliferation and counter-terrorism tools. This could be of relevance to the area of missiles and rockets as well.*

SMALL ARMS AND LIGHT WEAPONS

Existing Instrument/Initiatives

UN Programme of Action

The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), adopted by Member States at the 2001 United Nation Conference, was the first step by the international community collectively to combat the problem and move towards establishing universal norms to eradicate the global scourge of the uncontrolled proliferation and misuse of illicit small arms and light weapons (SALW).

Since the adoption of the PoA, progress has been made in the following areas:

- Enhanced recognition of a people-centered aspect of the SALW issue;
- Improved institutions and capacity building to tackle the issue of SALW;
- Enhanced measures for import/export control, public awareness and resource mobilization;
- Tightened measures against terrorism and organized crime.

Regional initiatives have begun to take shape, with regional organizations taking a comprehensive approach in dealing with issues of mutual concern, including ways and means to combat terrorism, transnational crime and trafficking in drugs.

The critical role of international cooperation and assistance has also been a cross-cutting theme, with Member States aiming to strengthen partnerships to:

- Enact and apply regulations and legislation in order to close identified loopholes;
- Actively contribute to initiatives to foster international cooperation and develop common standards;
- Provide training, financial and technical assistance to affected countries.

Challenge

The illicit transfer and circulation of SALW and their excessive accumulation and uncontrolled spread in many regions of the world, especially in conflict regions, pose a serious threat to peace. Reconciliation among the fighting parties and the stabilization of the situation become more difficult. Security of states and groups within states as well as of individuals is undermined. Refocussing on economic development is prevented. Provision of humanitarian assistance to victims of armed conflict becomes an endangered activity. The availability of such weapons tends to enhance and perpetuate crime and terrorism.

Areas to be addressed/strengthened

The problems of SALW are multi-dimensional and interlinked. In order to combat complex and difficult problems related to SALW, a comprehensive approach is essential.

Despite the progress made, the challenges are still daunting. There is no international legally-binding instrument, nor even a universal code of conduct, in this field. Transparency at the global level in the trade in SALW is still elusive. Experiences in conflict regions provide a solid basis

on which such a code of conflict could be built.

Key areas that need to be addressed

- The issues of tracing, marking, brokering, import and export controls and law enforcement are at the core of illicit arms problems. The creation of an international instrument on tracing illicit small arms is therefore an important element in addressing arms supply on a regional and global level by identifying and penalizing illicit arms transfers.

- Supply of illicit arms can be curbed through agreement on common norms and standards and by properly regulating the legal possession and trade of arms. This would include guidelines authorizing exports, imports and transit of SALW, with the issue of end-user certificates deserving special attention. In this connection, the implementation and adherence to arms embargoes, as well as stricter scrutiny of arms trafficking in violation of such sanctions, should be emphasized.

- Enhanced capacity for law enforcement and conformity to global norms is a prerequisite to capacity building. Affected countries must be provided with concrete assistance and training in the areas such as weapons collection, disposal and stockpile management. A detailed assessment of needs and required funds as an immediate goal may provide a useful basis for further action if available resources are insufficient.

- To tackle cross-boundary trafficking in weapons diverted from legitimate stocks, transparency to build confidence is needed to complement effective stockpile management. Although not immediately possible for regions locked in tense and hostile relationships, information sharing and the exchange of national experiences, including the dissemination of information on arms transfers, could offer a long-term

means to apprehend and deal with transnational activities in illicit arms trafficking.

- In societies emerging from deep-rooted conflicts, where small arms are abundant, the political class that has often irresponsibly participated in fueling armed conflict must live up to its responsibility to focus all its efforts on reconciliation. Reconciliation at all politico-social levels, including at the grassroots level within different communities, is the key to ending a violent conflict and reconstructing war-torn societies. It is important to design disarmament programmes with a view to facilitating reconciliation. As an indispensable element in the early stage of post-conflict reconstruction, it is of crucial importance that disarmament programmes be carefully designed to suit the specific conflict situation and with the concept of reconciliation at its core.

Recommendations

- *Urgent action must be taken by the international community to curb the flow of small arms and light weapons to regions of conflict or with potential for conflict and to ban the supply of such weapons to non-State actors. States should be urged to reach consensus on the issue of banning the supply of SALW to non-State actors. Legal sanctions against perpetrators should be installed.*

- *The Security Council should adopt a resolution obligating the UN Member States to enact national laws that implement Security Council arms embargoes and to prosecute violators.*

- *The risks that the legal supply of small arms and light weapons could contribute to enhancing violence in local and regional*

conflict should be addressed. A universal code of conduct should be adopted on the trade in SALW. Global and regional transparency measures should be adopted.

- *Develop legally-binding international instruments regulating tracing, marking and controlling brokering of SALW expeditiously . The present negotiations should be pursued with expediency.*

- *The UN should take the lead in coordinating more closely with other international organizations and regional organizations to produce synergy in the collective efforts to address the threat posed by the proliferation of SALW.*

- *The UN should form a coalition with concerned Member States, parliamentarians, civil society, including non-governmental organizations, in launching a global campaign aimed at preventing, reducing and eradicating the proliferation of SALW.*

- *Post-conflict small arms disarmament programmes should be community-based and human security-centred, and should include local security force reform. The United Nations should coordinate international efforts in collectively providing economic and social incentives to war-affected communities and populations. The successful model of "weapons for development" should be replicated in more communities and countries emerging from conflicts.*

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LANDMINES

Existing Regimes

Programme of Action

There are two multilateral legal instruments on landmines: *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction* (Mine-Ban Convention) and *the Amended Protocol II to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects* (CCW).

The *Mine-Ban Convention* provides a total ban on anti-personnel mines (APMs). The rapid conclusion of the Convention highlighted the successful formula forged from a concerted effort by a global coalition of civil society groups, governments, and international organizations. The international campaign was aimed at addressing the international humanitarian crisis caused by APMs that was brought to public attention globally in the 1990s. The Mine-Ban Convention has 141 States Parties, plus 9 signatories as of 1 April 2004. However, some important mine producers and users are not party to it.

The Mine-Ban Convention not only created a new international norm among its State Parties (parts of which have also exerted influence on several non-parties through the norm has not yet become universal prohibition of the weapon), but also actually implemented its humanitarian goals on the ground, and has truly made a difference in the lives of people and their communities. Major progress has

also been made in the following areas:

- Transfers of APMs have virtually halted;
- Vast tracts of previously mined land have been cleared and returned to productive use, and some mine-affected States Parties have declared themselves mine-free or almost there;
- More than 31 million stockpiled mines have been destroyed by States Parties to the Convention, removing these weapons from arsenals and the possibility that they will ever be planted in the ground;
- Most important, the rate of new landmine casualties has significantly declined (estimates from the International Campaign to Ban Landmines in 1997 were 26,000 victims/year, and current estimates range from 15,000 - 20,000/year).

Amended Protocol II of the CCW prohibits the indiscriminate use of mines, and their intentional use against civilians. It prohibits the use of APMs that do not contain enough iron to be detected with standard demining equipment and also, limits the transfer of landmines. It also requires that remotely delivered landmines have effective self-destructing and self-deactivating mechanisms. In 1996, Parties to the Protocol agreed to expand its scope to apply to internal conflicts.

Though the Protocol falls short of a total ban of landmines, it plays an important role in imposing a restrictive use of this weapon. Besides, many key countries that are not party to the Mine-Ban Convention have consented to be bound by CCW Protocol II.

Challenges

Mine-Ban Convention

The most difficult challenge is sustaining high-level political attention and public interest and resources on the APM issue in order truly to eliminate APMs and the threat they pose. Vast stockpiles of mines remain in the arsenals of States outside the Mine-Ban Convention. Several mine-affected countries have not joined the Convention either. Implementation of the Convention poses challenges. Efforts must continue to ensure that the number of new mine victims decreases, and that adequate resources are devoted to the care and rehabilitation of mine survivors, a number which increases every year. Realistic but ambitious national plans must be put in place to ensure the ten-year deadlines for the clearance of mined areas are met.

Amended Protocol II on landmines

Much more effort is needed by States Parties to implement the Protocol, especially meeting the new provisions on mine-detectability criteria, self-deactivation and self-destruction. The scope of the Protocol was expanded to cover internal conflicts in 1996, yet its application, including how to ensure non-state actors comply with the Protocol, lacks follow-up action.

Recommendation

All States must do their utmost to address the humanitarian objectives of the mine issue.

Mine-Ban Convention

States Parties should:

- *Take concrete steps to promote the full implementation of the Convention, in particular, the prevention and suppression of prohibited acts, and to ensure compliance with the Convention. Greater efforts must be made to meet deadlines set out in the Convention, such as those on destruction of stockpiles and mine-clearance.*

- *Promote the universality of the Convention as a priority task and undertake strong efforts to include anti-vehicle mines as they also have long-lasting effects on civilian life.*

- *States that believe the Convention is presently incompatible with their vital security interests should revisit their position regularly. Meanwhile, they should do their utmost to contribute to the fight against the negative humanitarian consequences of landmines by adhering to Amended Protocol II to the CCW as well as through technical developments.*

- *Utilize the First Review Conference of the Convention to renew the political momentum to continue to seek a comprehensive resolution to the humanitarian crises caused by APMs. The UN, States Parties and civil society should strengthen their cooperation to ensure the participation in the First Review Conference at the highest possible level and the issuance of a strong Political*

Declaration by the High-Level Segment of the Conference. All interested actors should help raise the profile of the Review Conference to ensure public pressure is brought to bear in advance to encourage renewed commitments.

- *Identify a concrete action plan at the First Review Conference aimed at achieving the core objectives of the Convention, namely, clearing mined areas, assisting mine victims, destroying stockpiled mines, and universalizing the Convention.*

- *Efforts should be made to maintain global attention to the Convention. There is a need for governments and the UN system to assist in implementation by supporting the outcomes of the Review Conference, including mobilizing sufficient resources and providing assistance to mine-affected countries, with a particular emphasis on demining.*

- *Further strengthen comprehensive cooperation across the United Nations through the UN Mine Action Service, in addressing the threat posed by APMs in the following areas: global coordination, emergency relief operations, peacekeeping operations, and reconstruction and development; enhance the United Nations coordination and cooperation with other leading international organization and NGOs, such as the International Committee of the Red Cross, the International Committee to Ban Landmines, the Geneva International Centre for Humanitarian Demining. Anti-vehicle mines should be included*

Amended Protocol II

States Parties should:

- *Take concrete measures to ensure the implementation of the Protocol, including the new criteria on mine detectability, self-deactivation and self-destruction, as well as the destruction of old stockpiles inconsistent with the new criteria.*

- *Promote international cooperation aimed at assisting states parties to the Protocol in meeting the new criteria on mine detectability, self-deactivation and self-destruction.*

- *Make efforts to persuade those countries not yet parties to the Mine-Ban Convention to agree to be bound by the Amended Protocol II to ensure no gap is left.*

- *Develop a mechanism to hold non-state actors accountable for violating the provisions of the Protocol during intra-state armed conflicts, e.g., make such violation a punishable war crime.*

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EXPORT CONTROL: MULTILATERAL COOPERATION AMONG SMALLER GROUPS OF STATES

The need for enlargement

All treaties discussed above contain obligations of their parties to prevent the unauthorized export of materials, equipment and technology that could be used in weapons programmes. The regimes are complemented by multilateral cooperation among smaller numbers of member states. These more exclusive regimes deal specifically with rules for export controls. The Zangger Committee, Nuclear Suppliers' Group (NSG), the Australia Group (for chemical and biological weapons), the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (for conventional weapons) all set up criteria for export licensing, lists of items to be controlled, and procedures for information exchange. A more recent approach, the Proliferation Security Initiative (PSI), deals with the situation after export controls have failed, for intstance, the interception of international transport of WMD-related materials, equipment and technologies.

These regimes have been defended by their members as necessary to implement their undertakings under the legal regimes or to prevent dangers to peace and international security. They have been criticized by some non-members as violating obligations to foster international cooperation in the peaceful uses of the related technologies under the NPT, the CWC and the BWC. Suspicion has been articulated that they serve the defence of economic privileges by their predominantly more wealthy, industrialized members. In that sense, they have been a source of contention and divisiveness

throughout their existence.

The members of the NSG, the Australia Group and the MTCR have initiated outreach activities such as regional meetings, open seminars, bilateral talks, and general information activities (press statements, websites) in order to foster transparency and dialogue. These activities have enhanced the understanding of non-members of the problems involved and of the measures taken by member. However, they have not completely removed all concerns of some non-members.

Security Council resolution 1540 (2004) on the proliferation of weapons of mass destruction obliges all Member States to "establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations". The resolution thus makes obligations that are contained in general form in the treaties on nuclear, biological and chemical weapons and have been partially elaborated by the review conferences of such regimes, a universal obligation. At the same time, it spells out the operative meaning of these obligations.

Recommendations

- *It might be appropriate to set up open-ended working groups on the implementation of these export control obligations and to invite the NSG, the Australia Group and the MTCR to give input with regard to possible items to be listed and experiences and models*

for export control structures and licensing criteria. Other UN Members could draw on such advice on a voluntary basis.

- *Export control systems should include agreed lists of items to be subjected to export licensing, a catch-all clause dealing with non-listed items destined for weapons programmes, measures to cover the activities of intermediaries such as brokers, measures to ascertain the end use of transferred items, the intangible transfer of technology, a standard for enforcement measures, and an understanding not to undercut negative licensing decisions taken by another state.*

- *At the same time, the members of the export control regimes should consider offers of systematic legal, technical, organizational and financial assistance for the creation of effective export control systems on which those UN Member States lacking the respective resources could draw. While the gap between members and non-members would not be completely closed, it would be narrowed considerably through such practical cooperation.*

- *Open seminars should be offered to enhance the information on export control issues and help to develop the skills of both civil society and officials in understanding and implementing export control law and regulation.*

- *The role of the United Nations should be strengthened in fostering cooperation and coordination among Member States on export controls.*

The recent discovery of a transnational nuclear trafficking network based on non-state actors in a state with nuclear weapons capabilities indicates that the exchange of information beyond the membership of the present export control regimes is crucial for curbing the flow of WMD related material, equipment, and technology. Given the challenge posed by non-state actors, export controls in order to be effective should be as much international as national, and more inclusive than exclusive.

Recommendations

- *There should be a universal information system on illegal procurement and trafficking activities going beyond the present IAEA data base and integrating the insights from the various WMD fields to permit a more comprehensive picture; such a broader exchange would not prevent States from committing to more in-depth intelligence sharing in smaller settings if they so chose.*

- *Efforts should be made to develop broad-based, universal norms and rules for export controls.*

A number of like-minded States acting outside the above frameworks have established the Proliferation Security Initiative (PSI). These states are working together to stop the flow of weapons of mass destruction, delivery systems and related materials to states and non-state actors of proliferation concern by virtue of a variety of means, including interdiction within the boundaries of international law. Currently, more than 60 states are participating. Members make a strong effort to ensure the cooperation of coastal states, important flag states and states of ship owners so that interception of ships carrying such items would be in accordance with internation-

al law. The international community needs also the assurance that such transports would not reach their destination in the few, exceptional cases where such a legal basis is lacking.

Recommendations

- *PSI should continue to be implemented in a manner consistent with international law.*
- *Intercepts on the high seas where present legal authority is not sufficient should be based on specific Security Council authorization. The acting state should be obliged to report to the Council the evidence forcing interception and the results of the search.*
- *Participants in PSI operations should have in place arrangements to cover any damages that result from intercept and search of transports that prove innocent.*
- *It is advisable to initiate negotiations on ways and means to complement the Law of the Sea in order to cover the cases where presently legal authority for intercept is lacking.*
- *All states should consider becoming supporters of PSI as to make the initiative into a universal, multilateral arrangement.*

THE ROLE OF THE UNITED NATIONS

The most important role for the United Nations consists of its efforts to work on the most dangerous conflicts among and within States that provide the key motivations for acquiring weapons, including weapons of mass destruction. The United Nations must enhance these efforts to combat this danger at the source. In this context, the Organization should continue to support and encourage efforts at the regional level to cope with the threat of the proliferation of weapons of mass destruction, including to non-state actors, e.g., the proposed Zone Free of Weapons of Mass Destruction in the Middle East, supported by all countries in the region.

Among the instruments of the international community to combat the dangers of the spread of weapons and of international terrorism, the first priority is to strengthen international treaties and other arrangements that serve these objectives. To this end, the capabilities of the United Nations, and the Security Council in particular, to uphold these treaties must be further enhanced, notably the capacity to respond in cases of grave non-compliance that could pose a threat to peace and international security.

In the NPT context, the IAEA Board of Governors can, under article XII.C of the IAEA statute, put cases of non-compliance before the Security Council and the General Assembly. Each State Party of the BWC as well as a meeting of States Parties, can request the Security Council and the General Assembly in cases of concern of non-compliance, to undertake an investigation of the matter (article VI). The Executive Council of the OPCW can bring non-compliance cases of particular gravity and urgency directly to the General Assembly and the Security Council. The Security Council has addressed the issue of weapons of mass destruction repeated-

ly, and has, *inter alia*, defined the proliferation of weapons of mass destruction, in its presidential declaration of 31. January 1992 and its resolution 1540 (2004) as a threat to peace and international security. It thus, could decide to take action on such cases under Chapter VII of the Charter of the United Nations. The Council also possesses the authority to take the initiative on its own in cases of proliferation and non-compliance even if referred to it by other actors or institutions.

Multilateral regimes are a first line of defence against both state and non-state proliferation; General Assembly and the Security Council serve as a last line of defence. The Security Council may choose to act in support of non-proliferation treaties, when such regimes put serious non-compliance cases in its hands. This would happen because the regime-inherent instruments do not suffice to remedy the situation and hence there is the necessity of using the Security Council's authority to solve the problem. The Security Council may choose to take the initiative on its own, *inter alia*, when problems other than non-compliance arise that cannot be dealt with by the instruments currently available to the regimes themselves, or when they present such urgent risks that immediate measures are required — until the regimes have been adapted to cope with the problem concerned. Action by the Security Council may also be called for when emerging dangers require a universal response.

The specifics of non-compliance cases vary. They cannot be addressed in a schematic way. Dealing with non-compliance involves a series of crucial decisions. Except for cases where the evidence of non-compliance is unambiguous and undisputed, the Security Council would develop its judgement of the assessment offered by the treaty organizations that a serious breach of non-compliance that could pose a threat to peace and international security had indeed occurred. It would have to assess the gravity of the risk posed to international

peace and security by this breach. It would also have to decide on the appropriate means under the Charter to remedy the situation. All these decisions require timely and efficient decision-making.

For these tasks, the Security Council should be able to draw upon independent technical expert capacity. Information available to Member States should be made available to the Security Council as far as possible. On nuclear and chemical weapons issues, independent assessment capability on which the Council can draw is available at the IAEA, the CTBTO and the OPCW. On biological weapons and missile issues and for a general assessment of the whole array of proliferation concerns, capacity must be available to the UN at short notice.

Recommendations

- *In cases of concern about non-compliance, the instruments available within established regimes should be fully utilized. Complementary access under the Additional Protocol (or special inspections as long as the Protocol has not been adopted by all NPT Parties), challenge inspections under the CWC, and investigations under the BWC should be invoked by the respective States Parties to regimes and the organization's bodies whenever needed.*

- *For cases referred to the Security Council, timely and efficient decision-making should be ensured. All relevant information and aspects should be made available for consideration, including the views of states from the region concerned. If required, the Security Council should be able to obtain independent technical expertise on short notice, drawing, as appropriate, on the verification bodies of the*

regime concerned.

- *If the threat is not assessed by the Security Council as requiring immediate effective action and important questions of fact remain undisclosed, the imposition of intrusive inspection and elimination activities might be a useful way to address the situation. However, it must be ensured that inspections do not become a device to postpone necessary decisions.*

- *There should be a core technical WMD verification and elimination capability with particular expertise in the BW and missile sector available at UN headquarters. This core organisation should be capable of drawing on a broad roster of experts.*

- *In order to make the most economical use of this expertise, consideration should be given to locating a small core unit, designed to enhance the resources available to the Security Council, within the Department for Disarmament Affairs. Care should be taken to ensure efficiency while avoiding unnecessary growth of bureaucracy.*

There is a risk of non-state actor proliferation which cannot be completely averted by the instruments presently available within the various treaty regime. This risk has motivated the work on Security Council resolution 1540 (2004) on the proliferation weapons of mass destruction. This resolution marks a landmark in the efforts of the international community to fight the threat of weapons of mass destruction terrorism.

In the course of its considerations, concern was expressed by non-permanent members and non-members of

the Council about the general scope of the resolution. Rather than being case-specific, it obliges the UN membership to take certain quasi-legislative actions. These concerns point to a real dilemma in the fight against proliferation of weapons of mass destruction, including their spread to non-state actors: risks are viewed as so high that immediate action cannot be avoided to compel all UN members to install effective measures at once.

The Council's establishment of general rules in this regard augments the inherent inequality between permanent and non-permanent members. No measure will be imposed that would restrict the core interests of one of the P-5, through all other Member States do not enjoy the same degree of protection of their national interests. There is also no procedure to review the compatibility of Security Council's adopted norms with general principles of international law nor their specific utility and effectiveness in achieving their stated objectives. While the urgency of the risk proposed by non-state actors may justify the adoption of such stopgap measures, such concerns should be heeded. In the working on the resolution, these concerns were raised in consultations and open meetings between the P-5 and non-members.

Recommendations

- *If existing WMD regimes do not yet contain necessary instruments to cope with new and urgent challenges, and the risk emerging from them appears immediate, the Security Council might decide to mandate steps to remedy the situation.*

- *Measures adopted by the Security Council in such situations should carry a sunset clause, that is, they should be reviewed by*

the Security Council after an appropriate period of time and be extended only if such a review proved their effectiveness and they are still deemed necessary to combat a serious risk to peace and international security.

- *When the Security Council adopts a resolution imposing such measures, it should invite simultaneously the members of the respective regimes or, where appropriate, the General Assembly to set up a negotiating body to create a universal legal instrument for provisions that are not covered by existing treaties and agreements and are outside their scope.*

- *Security Council resolution 1540 should be utilised to encourage members of the treaties and agreements to fully implement those provisions that help prevent the transfer of related items and technologies to non-state actors, and to continue their efforts to make the treaties and agreements universal. The Committee installed to supervise the operation of resolution 1540 should assist member states to achieve at effective implementation and should develop recommendations at the end of its two-year mandate how the provisions of resolution 1540 might be improved.*

The danger of the proliferation of weapons of mass destruction, including into the hands of non-state actors, requires that certain measures be applied universally to avert immediate threats to peace and international security. Such measures may be, so far, only binding on the States party to a

particular treaty or convention. Such measures may also be mandated by the Security Council to include non-members of those regimes. In order to be effective, they should take into account the security interests of such non-members.

Recommendation

- *When the Security Council considers universalizing measures which so far are only binding on regime members, there should be consultations with states not members to such the regimes. Their views and interests should be taken into account.*

When the Security Council acts to address issues related to the spread of weapons, including to non-state actors, the involvement of the General Assembly should be ensured in the light of the shared responsibility under the Charter for maintaining peace and international security. The effectiveness of universal measures benefits from the support of the whole international community. To achieve this support, cooperation between the Security Council and the General Assembly should be close and continuous, in accordance with the provisions of the Charter. A steady flow of information and communication between the Security Council and the members of the General Assembly is conducive to avoiding misunderstandings and to maintaining a sense of community on which the success of such critical measures rests. In addition, successful and effective implementation by Member States is more easily achieved when the objective of such measures is clearly understood and their scope and direction are clear.

Recommendation

- *When the Security Council is considering measures in response to and for the prevention of the proliferation of weapons or other means of mass destruction, the General Assembly should be fully informed about the Council's deliberations and the views of General Assembly members should be taken into account. Close consultations and open sessions of the Security Council are useful in this regard.*

The Secretary-General, under Article 99 of the United Nations Charter, may bring any subject relating to the maintenance of international peace and security before the Security Council. It is thus within the powers of the Secretary-General to alert the Council to any case of real or supposed non-compliance or to other cases of proliferation of weapons of mass destruction to states or non-state actors which, in his view, presents a threat to international peace and security. The Secretary-General may sometimes dispose of information not generally available or may deem it necessary to take the initiative to bring a specific security-related issue to the attention of the Security Council. In any case, the UN Secretary-General would consult closely with members of the United Nations when considering making use of article 99.

Recommendation

- *The Secretary-General should make use of his article 99 authority whenever, in his opinion, this is necessary to face a threat to international peace and security, including those emerging from the proliferation of weapons of mass destruction.*

- *To be kept abreast of current developments, the Secretary-General should bring together regularly the heads of the OPCW, the IAEA, the CTBTO and the World Health Organisation to be briefed about events, findings and insights relevant to peace and international security.*

ANNEX

Members of the Advisory Board on Disarmament Matters, 2004

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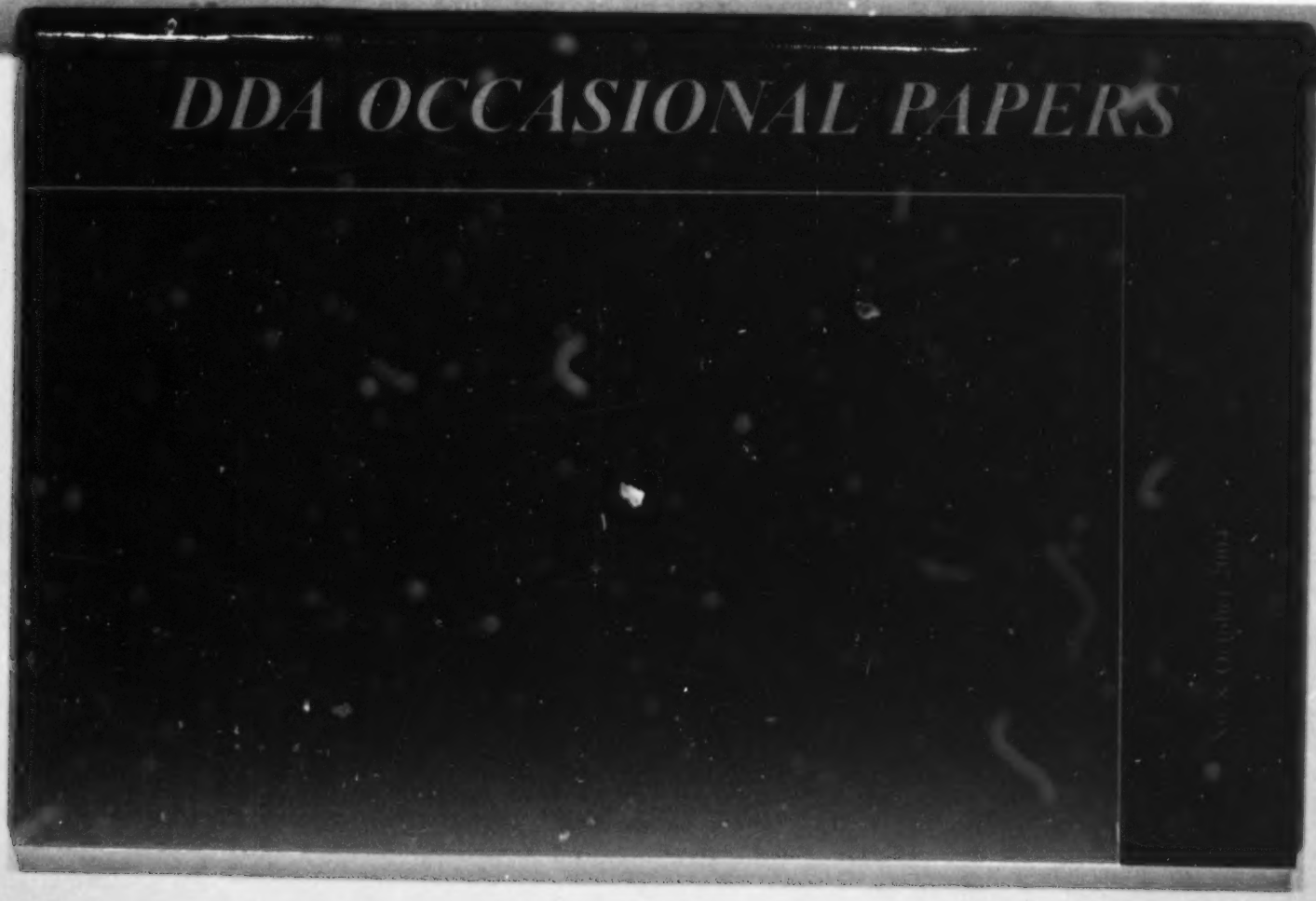
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